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MARCH 7, 2005
NEWS ANALYSIS
By Jessi Hempel



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Are Bloggers Journalists?

A judge didn't think so, thus his ruling that three blogs must reveal their sources. The decision has sparked a debate and may chill such sites

A California judge issued a preliminary ruling on Mar. 3 that three bloggers who published leaked information about an unreleased Apple (AAPL) product must divulge their confidential sources. If the ruling holds, it will set a precedent certain to reverberate through the blogosphere because this means under the law bloggers aren't considered journalists.

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To crack down on internal leaks, Apple has taken legal action against three Web logs: **PowerPage**, **Apple Insider**, and **ThinkSecret**. The sites published information about an unreleased product, code-named Asteroid, that Apple considered a trade secret. According to court papers, the company says the people who run these sites aren't "legitimate members of the press," and therefore it has the right

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Billionaire Carl Icahn wants to break up Time Warner. What do you think?

- No way. Time Warner may be troubled, but leave the turnaround to Dick Parsons and his team
- Maybe. Some of Icahn's ideas, such as splitting off the cable biz, are sound and should be adopted
- Totally. Time Warner's AOL deal was doomed from the start, and a breakup is long overdue
- Not sure

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to subpoena information that will reveal which Apple employees are violating their confidentiality agreements. In most cases, journalists are protected under the First Amendment and don't have to reveal their sources.

"BIZARRE AND DANGEROUS STANDARD"? The civil rights group Electronic Frontier Foundation, which represents two of the three sites under fire, says being able to ensure sources' confidentiality is critical to any journalist's ability to acquire information -- and that includes Web diarists, aka bloggers. Says EFF attorney Kevin Bankston: "They're people who gather news, and they do so with the intent to disseminate that news to the public. The only distinction to be made between these people and professional journalists at *The New York Times* is that they're online only."

So is a blogger a journalist? Certainly, some organizations have begun to legitimize Web logs as a valid grassroots form of journalism. In 2004, bloggers for the first time received press passes to cover the conventions during the Presidential elections. They have broken major news stories. Several prominent bloggers have become media pundits. And mainstream media outfits, including BusinessWeek Online, are developing blogs to complement their traditional outlets. (BusinessWeek Online first reported the judge's tentative ruling in this case Mar. 4 on BW blog **Tech Beat**.)

What's more, at least one of the three named bloggers is considered a legitimate journalist outside of his Web log. Harvard University student Nicholas Ciarelli, who writes ThinkSecret under the pseudonym Nick DePlume, is a reporter for the *Harvard Crimson*. In the larger blogging community, many notable bloggers have decamped from mainstream media sources. Dan Gillmor was the technology columnist at the *San Jose Mercury News* for a decade before leaving last year to found Grassroots Media, a project to encourage citizen-based published content. He writes on his blog, "By [the judge's] bizarre and dangerous standard, I apparently stopped being a journalist the day I left my newspaper job after a quarter-century of writing for newspapers."

CHILLING EFFECT. However, blogs have also fast gained a reputation for inaccuracy that threatens to erode their writers' claim to the title of journalist. Just as these sites have been touted as the new pillars of American democracy for their ability to ensure that any literate person can publish, they have also proven to be swirling rumor mills. In traditional media, the same legal rights that allow a journalist to protect sources also hold such writers accountable to report the truth. If journalists stray from what's true, they can be charged with libel.

Professional blogger Lockhart Steele is the managing editor for Gawker Media's portfolio of Web logs. He also runs a quippy New York real estate blog called

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Curbed.com that solicits reader tips. Over dinner last February, he made it clear he did not consider himself a journalist. "I don't have time to do the fact-checking you do," said Steele. "*BusinessWeek* is reporting a different kind of news." He says a lawsuit could quickly bring down a shoestring operation like Curbed.com.

The California judge plans to release a written ruling on the issue soon, and until then, Apple's subpoenas remain on hold. The debate over bloggers as journalists is just beginning to pick up momentum, and the tentative decision could have a significant chilling effect on both bloggers and the sources that feed them. Just as the bloggers are following the case closely, so, too, are more than a few Apple employees.

Hempel is a staff editor for *BusinessWeek* in New York
 Edited by Patricia O'Connell

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